



**Office of the Attorney General  
State of Texas**

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ATTORNEY GENERAL

March 21, 1995

Mr. Todd K. Brown  
Executive Director  
Texas Workers' Compensation Commission  
Southfield Building, MS-4D  
400 South IH-35  
Austin, Texas 78704

Letter Opinion No. 95-021

Re: Whether the Workers' Compensation Commission may promulgate a rule defining "separate business entity" for purposes of chapter 407 of the Labor Code (ID# 30383)

Dear Mr. Brown:

You have requested an opinion concerning the authority of the Texas Workers' Compensation Commission (the "commission") to promulgate a rule defining "separate business entity" for purposes of chapter 407 of the Labor Code.<sup>1</sup> Chapter 407 of the Labor Code pertains to self-insurance regulation, and section 407.023(a) authorizes the commission, by majority vote, to certify an employer to self-insure, to revoke an employer's certification to self-insure, and to "certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer."<sup>2</sup> See Labor Code ch. 407, subchs. C, D (providing for certificate of authority to self-insure and requirements for certificate of authority).

Section 407.061, which lists general requirements with which an applicant for a certificate of authority to self-insure must comply, mandates in subsection (c) that, among other things, such an applicant present a plan for claims administration designating a

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<sup>1</sup>You have included with your request a copy of a judgment of the 261st Judicial District in which Judge Hart explicitly declined to interpret the term "separate business entity" under Labor Code section 407.001(5). *Roadway Express, Inc. v. Texas Workers' Compensation Comm'n*, No. 94-08344 (261st Dist. Ct., Travis County, Tex., Oct. 24, 1994). We note that you do not ask us how the commission should define "separate business entity"; you ask only whether the commission may promulgate a rule defining the term.

<sup>2</sup>Section 407.001 of the Labor Code, which provides definitions for purposes of chapter 407, defines "impaired employer" as

a certified self-insurer:

- (A) who has suspended payment of compensation as determined by the commission;
- (B) who has filed for relief under bankruptcy laws;
- (C) against whom bankruptcy proceedings have been filed; or
- (D) for whom a receiver has been appointed by a court of this state.

"qualified claims servicing contractor." Section 407.001(5) defines "qualified claims servicing contractor" as

a person who provides claims service for a certified self-insurer, who is a *separate business entity* from the affected certified self-insurer, and who is:

(A) an insurance company authorized by the Texas Department of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claims service under contract; or

(C) a third-party administrator that has on its staff an individual licensed under . . . [Article 21.07-4, Vernon's Texas Insurance Code]. [Emphasis added.]

You state that, to delineate what is an acceptable plan for claims administration, the commission currently is developing rules regarding workers' compensation claims servicing for certified self-insurers. You therefore ask whether the commission, for purposes of chapter 407 of the Labor Code, may define by rule the term "separate business entity," used in the definition of "qualified claims servicing contractor" in section 407.001(5). We conclude that it may if such a rule is necessary for the implementation and enforcement of title 5, subtitle A of the Labor Code.

An administrative agency possesses only those powers that the legislature statutorily has conferred upon it, together with those powers necessarily implied from the powers or duties expressly given. Attorney General Opinions JM-1102 (1989) at 2; JM-1017 (1989) at 3 (citing 2 TEX. JUR. 3D *Administrative Law* § 2 (1979)). The legislature may authorize an agency to promulgate rules and regulations in aid of the statutory authority the legislature has conferred upon the agency. *Kelly v. Industrial Accident Bd.*, 358 S.W.2d 874, 876 (Tex. Civ. App.--Austin 1962, writ ref'd) (citing 1 TEX. JUR. 2D *Administrative Law* § 11(1979)). The agency may not, however, promulgate rules and regulations that impose additional burdens, conditions, or restrictions exceeding or inconsistent with the statutory provisions. *Id.* at 876-77; Attorney General Opinion JM-1017 at 3 (1989) (citing *Kelly v. Industrial Accident Bd.*).

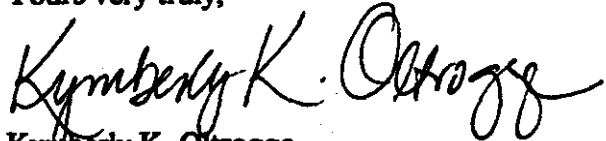
We note that section 402.061 of the Labor Code requires the commission to "adopt rules as necessary for the implementation and enforcement of" title 5, subtitle A of the Labor Code. Subtitle A includes chapter 407. Consequently, the commission may adopt a rule to define "separate business entity" for purposes of chapter 407 if the rule is necessary for the implementation and enforcement of title 5, subtitle A. Of course, the commission's rule must comport with the relevant statutory provisions. Furthermore, in deliberating upon and promulgating the rule, the commission must comply with the applicable provisions of the Administrative Procedure Act, Gov't Code ch. 2001, *see* Labor Code § 401.021(1) (providing that some, but not all, sections of Administrative

Procedure Act govern commission's proceedings), and the Open Meetings Act, Gov't Code ch. 551, see Labor Code § 401.021(2).

**S U M M A R Y**

The Texas Workers' Compensation Commission may adopt a rule to define "separate business entity" for purposes of chapter 407 of the Labor Code if such a rule is necessary for the implementation and enforcement of title 5, subtitle A of the Labor Code. The commission's rule must comport with the relevant statutory provisions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", written in a cursive style.

Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee